

MORROW



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arlandria Construction Company, Inc.

File: B-235151

Date: May 24, 1989

DIGEST

Protest that bid from a large business should be rejected is without merit where the solicitation was issued under the Small Business Competitiveness Demonstration Program and properly not restricted to small businesses.

DECISION

Arlandria Construction Company, Inc., the third low bidder, protests award to either of the two lower bidders under invitation for bids (IFB) No. GS-11P-89-MKC0154, issued by the General Services Administration (GSA), for installing firemen's capture and handicap items on elevators. Arlandria contends that the low bid was nonresponsive because the bidder did not acknowledge a material amendment to the solicitation and that the second low bidder was ineligible because it is a large business.

We deny the protest.

By letter dated April 24, 1989, GSA advises that it rejected the low bid as nonresponsive because the bidder failed to acknowledge amendment No. 1, which contained a modification to the IFB's wage rate, that materially affected the terms of the IFB.

Regarding the second low bid, GSA advises that the solicitation was issued in accordance with the Small Business Competitiveness Demonstration (SBCD) Program and was not restricted to small businesses. This SBCD Program was established by the Business Opportunity Development Reform Act of 1988, Pub. L. No. 100-656, 102 Stat. 3853 (1988), to provide for the testing of innovative procurement methods and procedures and targeted certain industry groups for testing whether small businesses were capable of competing successfully with large businesses for federal contracting opportunities on an unrestricted basis.

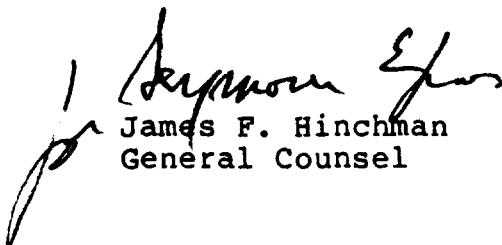
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Arlandria contends that GSA has failed to meet the goals under the Program that emerging small businesses receive 15 percent of the total contract dollars and that 40 percent of its contracts in this industry group are awarded to small businesses. On this basis, Arlandria contends that since the second low bidder is a large business, its bid should be discarded and an award made to a small business.

Under the SBCD Program, participating agencies are instructed to establish an annual small business participation goal that is 40 percent of the dollar value of the contract awards for each of the designated industry groups and to make a good faith effort to have emerging small business concerns awarded not less than 15 percent of the dollar value of the contract awards for each of the designated industry groups. Participating agencies are required to monitor the attainment of their small business participation goals on a quarterly basis. Under the Program, contracts with an anticipated value of \$25,000 or more, as is the case here, are required to be solicited on an unrestricted basis during the term of the Program, if the agency has attained the participation goals. See Pub. L. No. 100-656, supra.

GSA advises that it established the small business goals required by the Program, that the first reviewable quarter ended on March 31, 1989, and that the results of the quarter were not available until approximately mid May. The instant solicitation was issued during this first quarter; since the first review of goal attainment was not to have been made until the end of the quarter, so that at the time of solicitation issuance, the agency was not in a position to know if it was not attaining its participation goals, the IFB was properly issued on an unrestricted basis. Further, since the IFB was issued on an unrestricted basis, the second low bidder's large business status does not preclude acceptance of its bid.

The protest is denied.


James F. Hinchman
General Counsel